

# **Exhibit 1**

**Agreement and Waiver Regarding Early Application of  
Proposed Sentencing Guideline Amendments  
to U.S.S.G. § 4C1.1**

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff

v.

EPHRAIM ROSENBERG,  
Defendant.

NO. CR20-151 RAJ

AGREEMENT AND WAIVER  
REGARDING EARLY APPLICATION OF  
PROPOSED SENTENCING GUIDELINE  
AMENDMENTS TO U.S.S.G. § 4C1.1

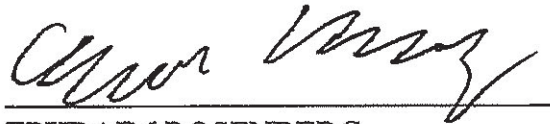
The United States, through United States Attorney Nicholas W. Brown and Assistant United States Attorney Miriam R. Hinman of the Western District of Washington and Defendant Ephraim Rosenberg, by and through Defendant's Attorneys, Jacob Laufer and Peter Offenbecher, enter into the following Agreement regarding the early application of proposed Sentencing Guidelines amendments to U.S.S.G. § 4C1.1 (Zero-Point Offender):

1. Defendant may seek to benefit now from published proposed Amendments to the Sentencing Guidelines that are favorable to defendants, but which are not scheduled to go into effect until November 2023. Specifically, Defendant may seek to be sentenced as a Zero-Point Offender, pursuant to published proposed Amendments to


U.S.S.G. § 4C1.1. Among other benefits, the Amendments would award a two-offense-level reduction for defendants who score zero criminal history points and meet all other criteria listed under U.S.S.G. § 4C1.1(a)(1)-(10). The Sentencing Commission has indicated it may make these Amendments retroactively applicable. Considering these expected revisions, during the interim period between now and the effective date, so long as these Amendments remain pending enactment but are not yet effective, the parties agree as follows:

- a. The parties have no agreement as to whether Defendant qualifies as a Zero-Point Offender. If the Court is inclined to sentence Defendant consistently with these proposed Amendments, the Court first must calculate the total offense level, criminal history category, and applicable sentencing range under the current version of the Sentencing Guidelines.
- b. After that, if the Court determines that Defendant meets all criteria to qualify as a Zero-Point Offender under the proposed Amendments to U.S.S.G. § 4C1.1, the United States will not object to the Court granting a two-level downward variance from the otherwise-applicable total offense level and otherwise treating Defendant as a Zero-Point Offender consistent with the proposed Amendments to U.S.S.G. § 4C1.1 and Application Notes.
- c. Defendant agrees that if the Court grants Defendant the benefit of early application of these proposed Amendments to U.S.S.G. § 4C1.1 at sentencing, then Defendant agrees that Defendant is not eligible for, and will not request, a post-conviction sentence reduction on the same basis, either on direct appeal or in any post-conviction motion, if and when the Amendments go into retroactive effect.
- d. Defendant further acknowledges that if the Court explicitly finds that Defendant does not qualify for a sentencing benefit under these proposed Amendments to U.S.S.G. § 4C1.1, Defendant waives any right to appeal that denial on direct appeal or in a collateral attack or post-conviction motion pursuant to 28 U.S.C. § 2255, as further described in the paragraph of the Plea Agreement entitled "Waiver of Appellate Rights and Rights to Collateral Attack." Similarly, if the Court explicitly finds that Defendant does not qualify for a sentencing benefit under these proposed Amendments, defendant also waives any right to request a post-conviction sentence reduction on the basis of those same Amendments, if and when the Amendments go into retroactive effect.

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2 Dated this 13th day of June, 2023.

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5 EPHRAIM ROSENBERG  
6 Defendant

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9 JACOB LAUFER  
10 PETER OFFENBECHER  
11 Attorneys for Defendant

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13 MIRIAM R. HINMAN  
14 Assistant United States Attorney  
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